

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID REID and DEPARTMENT OF THE NAVY,  
LONG BEACH NAVAL SHIPYARD, Long Beach, CA

*Docket No. 98-58; Submitted on the Record;  
Issued September 15, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has greater than a 15 percent permanent impairment of his right lower extremity, for which he has received a schedule award.

This is appellant's second appeal before the Board. In the prior appeal the Board found the case not in posture for decision and remanded the case for clarification of and recalculation of appellant's right lower extremity impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup>

The Board finds that appellant has no greater than a 15 percent permanent impairment of his right lower extremity, for which he has received a schedule award.

Upon remand the Office of Workers' Compensation Programs referred the case record to an Office medical adviser for further evaluation.

By report dated June 16, 1997, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and Office medical adviser, reviewed the medical reports and the record, noted that a prior Office medical consultant had rated appellant's impairment at six percent for right knee residual pain and two percent for having undergone a right partial medial meniscectomy and noted that appellant had been seen most recently by his treating orthopedic surgeon Dr. Robert W. Hunt, a Board-certified orthopedic surgeon, on February 22, 1994. Dr. Harris noted by report dated March 14, 1994, that at that time appellant was reported to have residual right knee symptoms, with range of motion of 0 to 135 degrees with crepitation and with 1/4 inch atrophy of the right thigh, but without weakness or instability. He noted that Dr. Hunt did not obtain x-rays. However, Dr. Harris noted that on August 5, 1993 appellant's right knee x-rays did not indicate any significant arthritis or joint space narrowing.

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<sup>1</sup> Docket No. 95-739 (issued May 15, 1997). Appellant's claim was accepted for right knee contusions, a right knee arthroscopy and bilateral elbow contusions.

Dr. Harris utilized the A.M.A., *Guides*<sup>2</sup> and determined that appellant had Grade IV pain in the right knee interfering with function (80 percent) of the lateral femoral cutaneous nerve (7 percent), referring to Table 68, page 89 and resulting in 6 percent impairment of the right lower extremity because of pain. He further noted that appellant had a two percent impairment of the right lower extremity for having undergone a partial medial meniscectomy, referring to Table 62, page 83. Dr. Harris noted that, although the x-ray report of August 5, 1993 did not indicate a significant joint space narrowing, there did appear to be loss of articular cartilage based upon the operative report of August 5, 1993, which indicated that there was an osteochondral defect of the medial femoral condyle of the right knee. Accordingly, he opined that appellant had a seven percent impairment of his right lower extremity, based upon arthritis impairments, referring to Table 62. Dr. Harris then utilized the combined values Tables to combine a 6 percent impairment for pain interfering with function, a 2 percent impairment for a partial medial meniscectomy and a 7 percent impairment for arthritis, which resulted in a 15 percent impairment of the right lower extremity. The date of maximum medical improvement was noted to be March 14, 1994.

Consequently, by decision dated June 24, 1997, the Office granted appellant an additional schedule award of 13 percent, which, when added to his prior 2 percent award, resulted in a 15 percent total schedule award for right lower extremity permanent impairment.

The Board concurs that the application of the A.M.A., *Guides* in this case is correct.

Appellant has submitted no evidence supporting that his injury-related permanent impairment is any greater than 15 percent. The most recent medical evidence discussing appellant's degree of permanent impairment was Dr. Hunt's March 14, 1994 report which was fully discussed in the Board's previous decision and order. On appeal appellant alleges that he has an injury-related impairment due to back pain and carpal tunnel syndrome. However, neither a back condition nor a carpal tunnel condition has ever been accepted by the Office as being

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<sup>2</sup> Although the standards for evaluating the permanent impairment of an extremity under the A.M.A., *Guides* are based primarily on loss of range of motion, all factors that prevent a limb from functioning normally, including pain and loss of strength, should be considered, together with loss of motion, in evaluating the degree of permanent impairment; see *Paul A. Toms*, 28 ECAB 403 (1987) Chapter 3.2k of the A.M.A., *Guides* provides a grading scheme and procedure for determining impairment of the lower extremity due to pain, discomfort, or loss of sensation. The element of pain may serve as the sole basis for determining the degree of impairment for schedule compensation purposes. The procedure manual notes that some objective and subjective impairments, such as pain, atrophy, loss of sensation and scarring, cannot easily be measured by the A.M.A., *Guides*, but that the effects of any such factors should be explicitly considered along with measurable impairments and correlated as closely as possible with factors set forth in the A.M.A., *Guides*.

causally related to his January 14, 1992 fall and therefore appellant is not now entitled to permanent impairment due to either of these alleged conditions.<sup>3</sup>

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 24, 1997 is hereby affirmed.

Dated, Washington, D.C.  
September 15, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>3</sup> Further, because neither the Federal Employees' Compensation Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, (the Act itself specifically excludes the back from the definition of "organ." See 5 U.S.C. § 8101(19)) no claimant is entitled to such an award. *E.g., Timothy J. McGuire*, 34 ECAB 189 (1982).